CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 158.

LOUISA V. KIDD, AS EXECUTRIX OF THE WILL OF H. B. TULANE, DECEASED, PLAINTIFF IN ERROR,

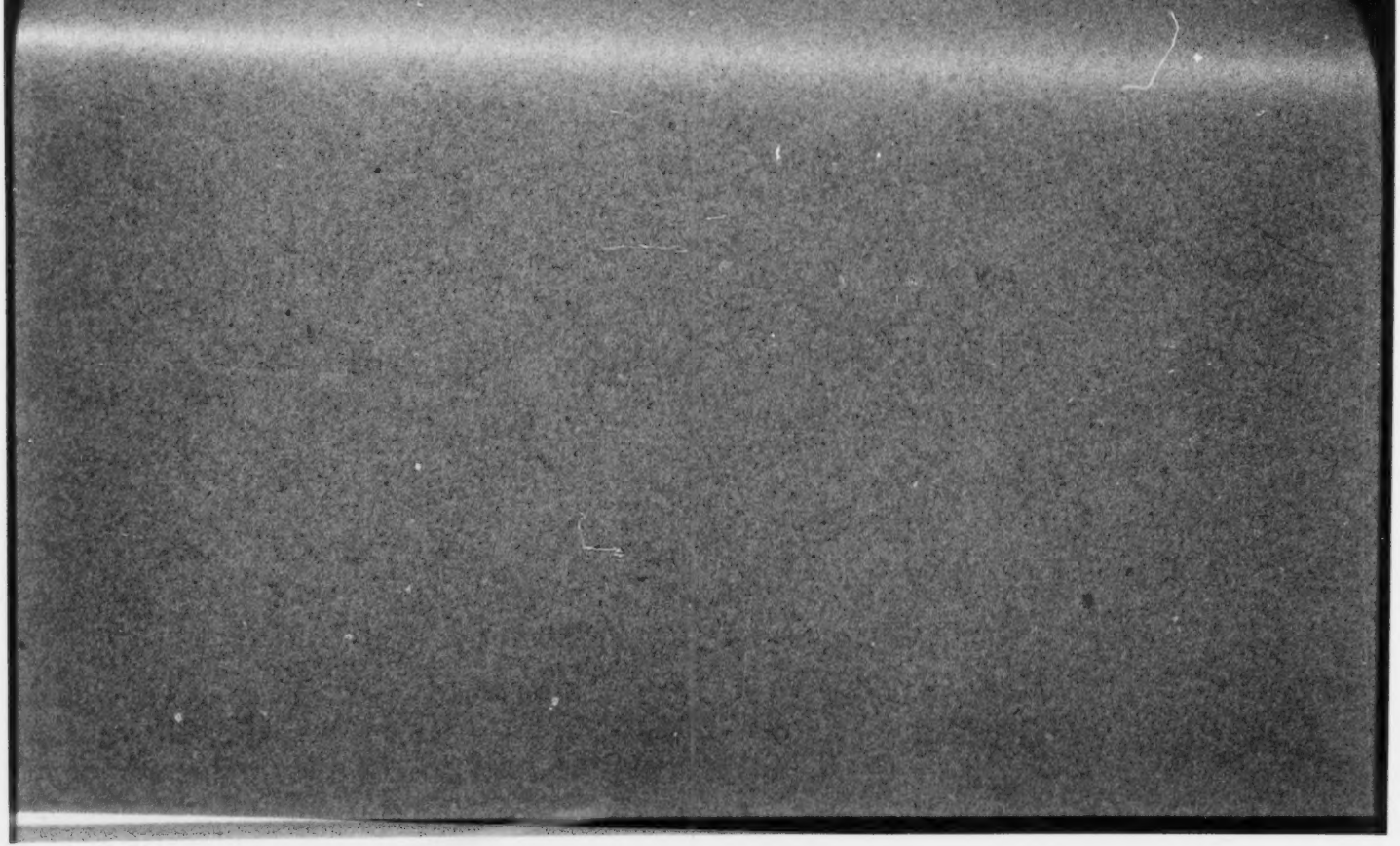
vs.

THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED AUGUST 28, 1901.

(18,256.)



(18,256.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 403.

LOUISA V. KIDD, AS EXECUTRIX OF THE WILL OF H. B. TULANE, DECEASED, PLAINTIFF IN ERROR,

vs.

THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1901.

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a (Filing.)

5 Div., 51. Supreme Court of Alabama.

Filed Mar. 27, 1901. Rob't F. Ligon, Jr., Clerk.

LOUISA V. KIDD, Ex'tr'x,
vs.
THE STATE OF ALABAMA.

Appeal from Elmore county circuit court.

Apr. 9, 1901.—Argued and submitted with No. 50.
June 29, 1901.—The judgment is affirmed on authority of The State *vs.* Kidd and The State *vs.* Kidd, executrix, 125 Ala. 413.

TYSON, *J.*

1 THE STATE OF ALABAMA,
Elmore County.

Be it remembered, that at a term of the circuit court of Elmore county, in the State of Alabama, begun and held for the aforesaid county at the court-house thereof, in the city of Wetumpka and county of Elmore, on Monday the 29th day of October A. D. 1900, it being the first day of said term. Present and presiding, the Hon. N. D. Denson, judge of the 5th judicial circuit, and one of the circuit judges of the State of Alabama. Proceedings were had and orders were made as follows to wit:

2 *Appeal Bond to the Circuit Court.*

THE STATE OF ALABAMA,
Elmore County.

Whereas, at the April term 1899 of the court of county commissioners for the county of Elmore, there came on to be heard the matter of the assessment of excaped taxes against L. A. Bates as executor and Louisa V. Kidd as executrix of the last will and testament of H. B. Tulane deceased for the years 1893 to 1897 inclusive, which was pleaded to and defended by Louisa V. Kidd as sole acting executrix, and whereas, upon such hearing the said Louisa V. Kidd as executrix as aforesaid was found liable and adjudged to be liable for, and adjudged to pay excaped taxes for the years aforesaid in the aggregate amount of $6,325.00 and whereas, the said Louisa V. Kidd as executrix has prayed an appeal from such decree and order to the next term of the circuit court of Elmore county and the same has been allowed upon the appellant entering into bond of thirteen thousand dollars ($13,000.00) the same being double the amount of the said tax and the probable cost, conditioned to prosecute such appeal to effect and pay such judgment as the court may render:

Now therefore know all men by these presents: that we the said Louisa V. Kidd as executrix aforesaid and individually as princi-

pal, and the United States Fidelity and Guaranty Co., a corporation duly incorporated under the laws of the State of Maryland, as surety, are held and firmly bound unto the State of Alabama and to such person or officer to whom such bond should be made payable in the penal sum of thirteen thousand dollars, which sum well and truly to be paid in lawful money of the United States we hereby bind ourselves, jointly and severally firmly by these presents.

Sealed with our seals this the 7th day of April 1899. The condition of the above obligation is such that if the said Louisa V. Kidd as executrix as aforesaid shall prosecute her aforesaid appeal to effect or in the event she shall fail in prosecuting her said appeal to effect, she shall pay such judgment as may be rendered against her then or in either of said events this obligation is to be null and void otherwise to be and remain in full force and effect.

{ The United States Fidelity & Guaranty } { Company, Incorporated 1896. }

LOUISA V. KIDD.
LOUISA V. KIDD,
As Executrix of the Will of H. B. Tulane, Dec'd.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By J. R. McMASTER, *Ag't, and*
By T. SCOTT SAYRE, *Att'y.*

Attest: F. W. LULL.

Filed and approved April 10th, 1899.

H. J. LANCASTER,
Principal Judge, Court of County Com's, Elmore Co., Ala.

3 We the jury find the issue in favor of the defendant.

J. M. HARRIS, *Foreman.*

May 5th, 1899.

4 *Complaint.*

EXHIBIT "A" TO BILL OF EXCEPTIONS.

THE STATE OF ALABAMA, }
Elmore County. }

To the honorable commissioners' court of said county:

I hereby report in writing that I have assessed escaped taxes against Louisa V. Kidd executrix, and L. A. Bates executor of the estate of H. B. Tulane deceased on the following-described property namely:

Stocks and bonds, money, money hoarded or on deposit subject to check draft or order, or in safety-deposit box, safe or vault, and elsewhere, moneyed capital, money lent, solvent credits and credits of value in the aggregate of the value of the sum of $200,000.00

That I have valued said property at $200,000.00

That for the year 1893 the taxes due on said property were to the State $900.00; special $100.00; county $1,000.00; total $2,000.00

That for the year 1894 the taxes due on said property were to the State $900.00; special $100.00; county $1,000.00; total $2,000.00
That for the year 1895 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00
That for the year 1896 the taxes due on said property were to the State $1,100.00; special $100.00; county $800.00; total $2,000.00
That for the year 1897 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00
That for the year 1898 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00
That the fees of tax commissioner 10 per cent. on the escaped taxes for the years from October 1, 1895 to October 1, 1896, October 1, 1896, to October 1, 1897 and October 1, 1897 to October 1, 1898 are $620.00 ($620.00) and the fees of the assessor are $3.00. Total costs $623.00
That the total amount of taxes from said estate State and county is $12,300.00, which added to the costs is $12,923.00
I append said assessment to this report.

J. I. PLOTT,
Tax Assessor.

5 1899. *Returned List.* 1899.

Elmore county, Ala., precinct No. 18. List of property and assessment *vs.* Louisa V. Kid, executrix, & L. A. Bates, executor, of the estate of H. B. Tulane, deceased, for yr. 1893, 1894, 1895, 1896, 1897, and 1898.

List of property returned for taxation by Louisa V. Kidd, ext., & L. A. Bates, ex't'r, est. H. B. Tulane.

Beat No. 8 to J. I. Plott, tax assessor of Elmore county, Ala., for the year 1899.

Stocks bonds money money hoarded or on deposit subject — draft or *or* order, or in safety-deposit box, safe or vault, & elsewhere.
Money capital, money lent, solvent credits & credits of value in the aggregate of the value of $200,000 for the yrs. 1893 1894 1895 & 1896 & 1897 1898.
Subscribed to before me this the 16 day of Dec. 1898.

J. I. PLOTT,
Tax Assessor.

Endorsement: Received and filed Dec. 16th 1898. W. P. Gaddis, judge of probate principal judge of the commissioners' court.

Continuance.

Fall Term, 1899, November 2d, 1899.

THE STATE OF ALABAMA
vs.
LOUISA V. KIDD, Ex'x. } 2225.

Continued—pending in supreme court.

6 *Demurrers of Defendant.*

In the Circuit Court of Elmore County, Ala.

THE STATE OF ALABAMA
v.
LOUISA V. KIDD, as Executrix of the Will of Horatio B. Tulane, Deceased.

Comes the defendant and demurs to the complaint or petition filed in this cause and for grounds of demurrer assigns the following:

1st.

Said complaint shows no valid assessment of property.

2nd.

Said complaint fails to allege any notice to this defendant by the tax assessor or by the tax commissioner of said assessment.

3rd.

It is not shown by said complaint that said assessment was ever entered on any book of assessment.

5th.

It is not alleged in the complaint that said assessment was ever entered under the head, "Commissioners' assessment of escaped taxes."

6th.

Said complaint shows affirmatively that said assessment was illegal in that several distinct kinds of property which under the law should have been valued separately were valued together as a whole.

7th.

Said complaint shows that the amount of tax was not extended in the assessment as required by law, so as to show the tax against each piece of property.

8th.

Said complaint shows that the property assessed was not described with the accuracy required by law.

9th.

Said complaint fails to show that the property assessed was of a character taxable under the laws of the State of Alabama.

10th.

Said complaint shows that the only assessment ever entered of said property was entered on assessment blanks of the character used in giving in taxes.

7 11th.

Said complaint fails to show that said assessment was made by or under the direction of any tax commissioner.

GUNTER & GUNTER,
J. M. CHILTON,
For Defendant.

Filed Nov. 2 1900.
L. C. SMITH, *Clerk.*

8 *Defendant's Pleas.*

In the Circuit Court of Elmore County, Ala.

STATE OF ALABAMA
v.
LOUISA V. KIDD, Ex'tr'x of the Last Will & Testament of Horatio B. Tulane, Deceased.

Comes the said defendant by her attorney, and for answer to the complaint in said cause, pleads as follows:—

1. That her said testator in his lifetime, and she as his executrix after his death, which occurred in Oct., 1897, regularly gave in for assessment for each of the years for which taxes are now claimed in said complaint all of the property belonging to the said Tulane during his life and to his estate after his death, in the State of Alabama which was taxed by the laws of Alabama, except the shares of the capital stock of railroads owned by said Tulane in his lifetime, and belonging to his estate after his death, which said railroads were and are corporations created by and located in other States than the State of Alabama, and which did not extend into Alabama, and which did no business in Alabama during any of said years. And that taxes were duly assessed against the property so given in and paid by said Tulane in his lifetime and by defendant since his death. And defendant says that all of said taxes now claimed of her are for and on account of said shares in said railroads so owned by said Tulane in his lifetime and by his estate after his death and not given in for assessment. That said Tulane was, during his life, a resident and citizen of the State of Alabama, and that defendant is also a resident and citizen of said State.

Defendant says that if the laws of Alabama impose the taxes

claimed in this suit upon said shares of said railroad companies, the same are illegal and void and violative of the Constitution of the United States and the XIV amendment thereof, in that there is no similar tax imposed by said laws upon the shares of domestic railroads or upon the shares of foreign railroads companies doing business in the State of Alabama. And defendant claims the benefit of the protection of the Constitution of the United States against the collection of the taxes claimed in this suit.

2. And for further plea in this behalf, defendant avers all of the facts stated in the foregoing plea No. 1, and says if the laws of Alabama impose the taxes claimed in this suit upon the said shares of the said railroad companies, the same are illegal and void
9 and violative of the constitution of the State of Alabama, in that there is no similar tax imposed by said laws upon the shares of domestic railroads or of foreign railroad companies doing business in the State of Alabama. And defendant claims the benefit and protection of the constitution of Alabama against the collection of the taxes claimed in this suit.

3. And for further plea in this behalf, defendant says that the claim for taxes for which this suit is brought is in large part for taxes on shares in the capital stock of foreign corporations owned by said Tulane in his lifetime, and by his estate after his death, and which said corporations were not located in Alabama and did no business in Alabama, and the shares in which were not subject to taxation for the years for which taxes are claimed in said complaint, because no similar taxes are imposed upon the shares of like domestic corporations and foreign corporations doing business in the State of Alabama. And so defendant pleads against the collection of the taxes assessed against her on said shares of foreign corporations, that the laws imposing the same are illegal and void under the Constitution of the United States and the XIV amendment thereof. And as to other taxes claimed of her in said complaint, she denies each and every allegation of the complaint respecting the same.

4. And for further plea in this behalf, defendant says that as to so much of said complaint as seeks to recover taxes on said capital stock described in pleas No. 1, 2 and 3, for the year 1898, that the said Tulane died on the 10th of October, 1897, and said taxes were assessed against this defendant as executrix of his last will. That the said Tulane was at the time of his death, a resident citizen of the State of Alabama, and his will was probated in the probate court of Elmore county, in said State, having jurisdiction thereof. That the said stocks were, at the time of the death of said Tulane, and up to the time of the institution of this suit, physically on deposit in the city of New York, State of New York, and subject to the administration in that State, and have never been in the possession or control of defendant, she not having qualified as executrix in that State. And as to so much of said complaint as seeks to recover other taxes of this defendant, she denies each and every allegation of the complaint.

5. And for further plea in this behalf, defendant avers that the

taxes claimed against her in this suit are for escaped taxes alleged to have been assessed under an act of the legislature of the
10 State of Alabama, approved the 3 day of February 1897, entitled An act to provide for the *the* more efficient assessment and collection of taxes in the State of Alabama. And this defendant avers that no notice of any assessment was given her before said assessment was entered of record.

6. And for further plea in this behalf, the defendant says that the taxes claimed of her in this suit are for escaped taxes alleged to *to* be owing on the property of H. B. Tulane, deceased, and assessed under the act of the legislature set forth in ple- No. 5, and this defendant says that no assessment of said property was ever entered of record in the assessor's record of taxes escaped.

7. And for further plea in this behalf, this defendant denies all the statements contained in said complaint against her, except that she is the executrix of the last will of H. B. Tulane, deceased.

GUNTER & GUNTER,
J. M. CHILTON,
For Defendant.

Endorsement: Filed Nov'r 2d 1900. L. C. Smith clerk.

11 *Demurrer to Defendant's Plea.*

In the Circuit Court of Elmore County.

STATE OF ALABAMA
vs.
LOUISA V. KIDD, as Ex'r'x. } 2225.

And now comes the plaintiff and demurs to the pleas numbered 1, 2, 3 and 4, filed by the defendant, and, for grounds of demurrer assigns the following.

1st. That said pleas show on their faces that the property assessed by the tax assessor of Elmore county, which assessment is the basis of this suit was subject to taxation in the county of Elmore, State of Alabama for the years for which said assessments were made.

2. That said pleas fail to aver any facts, which show or tend to show, that the situs of the property assessed for taxation by the tax assessor of Elmore county, which assessment is the basis of this suit was not during the years set out in such assessment in the county of Elmore, State of Alabama for the purposes of taxation.

3d. That facts, if they be facts, that the property assessed in said assessment was not actually within the State of Alabama and Elmore county during the years covered by said assessment but was kept without the State, and consisted of stocks and bonds in foreign corporations doing no business in the State of Alabama, affords no defense to the claim for taxes thereon, made in this suit.

4th. That the said pleas show that the said H. B. Tulane in his lifetime was the owner of all the personal property assessed in the assessment, which is the basis of this suit, for the years stated in the assessment, and that after his death, the said property belonged to

the estate of said Tulane of which the defendant is executrix, which estate is being administered in the courts of Elmore county, Alabama, of which county said Tulane was a resident at the time of his death, and during the years for which said assessment was made.

GORDON MACDONALD,
PARKER & GOLSON,
Att'ys for Pl'ff.
GORDON MACDONALD,
PARKER & GOLSON,
Att'ys for Pl'ff.

Endorsements: Filed Nov'r 2d 1900. L. C. Smith clerk.

12 *Verdict.*

No. 2225.

We the jury find for plaintiff and assess the damages at $5,900.00.

N. McINISH, *Foreman.*

Judgment.

STATE OF ALABAMA
vs.
LOUISA V. KIDD, Ex'x, &c. } 2225.

NOVEMBER 2D, 1900.

This day came the parties by attorneys, and by consent the pleas of defendant heretofore filed, are withdrawn, and defendant demurs to the complaint as shown by the record, and from demurrers on file, which demurrer being understood by the court,

It is considered and adjudged by the court that the demurrer be and is hereby overruled and held for naught. Thereupon the defendant filed sundry pleas. Plaintiff demurs to pleas 1, 2, 3 & 4, which demurrer is shown by the record, and being considered by the court, it is adjudged that said demurrer is sustained, whereupon issue is joined between the parties on the plea of general issue, and thereupon came a jury of good and lawful men to wit: Nevin McInish and eleven others who being sworn and empaneled as required by law, upon their oaths do say, "We the jury find for the plaintiff, and assess the damages at five thousand and nine hundred dollars." It is therefore adjudged by the court that the plaintiff recover of the defendant the sum of five thousand and nine hundred dollars, for which execution may issue to be levied of the goods and chattels, lands and tenements of the estate of H. B. Tulane dec'd. Defendant has 60 days to present bill of exceptions.

13 *Bill of Exceptions.*

In the Circuit Court of Elmore County, Fall Term, 1900.

STATE OF ALABAMA
v.
LOUISA V. KIDD, as Executrix.

Be it remembered that this cause coming on to be heard, the following proceedings were had. The plaintiff offered in evidence the assessment made by the tax assessor against the defendant, which is admitted by the parties as having been made on information furnished by the back-tax commissioner, after regular assessments on the other property, not set out in the agreement of facts below, of the defendant were made and taxes paid. Said paper was offered as the assessment of the tax assessor. The original of said paper is hereto attached as part of this bill of exceptions, marked "Exhibit A." And said paper is the paper used by the plaintiff as and for the declaration on the trial of this cause, and is the declaration or complaint referred to in the pleas of the defendant and proceedings in the cause.

The grounds of objection were: First, that it is not shown that the law was complied with in the way of notice to defendant and entry of assessment. Second, the assessment is not *prima facie* evidence of the liability claimed against defendant in this suit. The court overruled the objections, and the defendant excepted.

The plaintiff thereupon offered in evidence the following agreed statement of facts:

In the Circuit Court of Elmore Co.

STATE OF ALABAMA
v.
LOUISA V. KIDD, as Ex. } No. 2225.

Facts Admitted.

For the years for which taxes are claimed, the testator up to his death, in Oct., 1897, and his estate for the year 1898, had in the following corporations the amounts of stock of the value stated—each of said corporations were corporations of other States than Alabama, and during the years for which taxes are claimed, did no business in Alabama, and had no property therein, and gave in no property for taxation.

1. United N. J. R. R. & C. Co.,	$25,000,	val.....	$60,000
2. Morris & Essex R. R. Co.,	15,000,	"	22,500
3. Pen. Coal Company,	5,000,	"	15,000
4. Illinois Cen. R. R. Co.,	10,000,	"	10,000

That said corporations are all railroad companies.

14 (For'd).....	$107,500

The said Tulane and his estate also owned the following bonds—of the value stated:

1. Bonds of Tenn. Coal & Iron Co., $5,000, val.....	4,000
2. Bonds of the State of Alabama, $10,000, not assessable, value.....	10,000
	$121,000
Deduct Alabama bonds.....	10,000
	$111,000

And it is admitted that for the years for which taxes are claimed, none of the said stocks or bonds were given in or assessed for taxation in Alabama.

It is admitted that testator resided in Alabama, and in Elmore county, until Oct., 1897; that he then died, and his will was probated in said county, and defendant qualified as executrix in said State.

That said bonds and stocks were on deposit in the State of New York until after this suit was instituted, and were subject to administration and taxation in New York and that defendant never qualified as executor in New York, or received said bonds and stocks until the year 1900.

It is further admitted that when the assessment was made, the same was filed in the commissioners' court of Elmore county, and notice issued to defendant, and she appeared and defended against the same, and judgment going against her, she appealed to this court.

Nov. 2, 1900.

GORDON MACDONALD,
PARKER & GOLSON,
Att'ys for Pl'ff.
GUNTER & GUNTER,
J. M. CHILTON,
For Defendant.

This was all the evidence in the case, and thereupon, the plaintiff asked the court to give the following written charge to the jury: "If the jury believe the evidence in this cause, they will find for the plaintiff," which charge the judge gave to the jury, and to the giving of the same, the defendant excepted. And thereupon the defendant asked the court to give the following charge to the jury, which is in writing: "If the jury believe the evidence they will find for the defendant as to the claim for taxes on shares of foreign rail-
road companies," which charge the court refused, and to
15 which refusal the defendant duly excepted.

And this is duly signed and sealed as the defendant's bill of exceptions in this cause, this, the 12 day of Dec. 1900, within the

period allowed by the order of the court for the signing of the bill of exceptions in said cause.

N. D. DENSON,
Judge Presiding.

16 EXHIBIT A TO BILL OF EXCEPTIONS.

THE STATE OF ALABAMA, }
Elmore County. }

To the honorable commissioners' court of said county:

I hereby report in writing that I have assessed escaped taxes against Louisa V. Kidd executrix and L. A. Bates executor of the estate of H. B. Tulane deceased, on the following-described property, namely: stocks and bonds, money, money hoarded or on deposit subject to check draft or order, or in safety-deposit box, safe or vault, and elsewhere, moneyed capital, money lent, solvent credits and credits of value: in the aggregate of the value of the sum of $200,000.00 That I have valued said property at $200,000.00 That for the year 1893 the taxes due on said property were to the State $900.00; special $100.00: county $1,000.00; total $2,000.00 That for the year 1894 the taxes due on said property were to the State $900.00; special $100.00; county $1,000.00; total $2,000.00 That for the year 1895 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00; That for the year 1896 the taxes due on said property were to the State $1,100.00; special $100.00; county $800.00; total $2,000.00 That for the year 1897 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00 That for the year 1898 the taxes due on said property were to the State $1,100.00; special $100.00; county $900.00; total $2,100.00

That the fees of tax commissioner 10 % on the escaped taxes for the years from October 1, 1895 to October 1, 1896, October 1, 1896 to October 1, 1897 and October 1, 1897 to October 1, 1898 are $620.00 ($620.00) and the fees of the assessor are $3.00—total costs $623.00 That the total amount of taxes from said estate State and county is $12,300.00, which added to the costs is $12,923.00

I append said assessment to this report.

J. I. PLOTT,
Tax Assessor.

1899. *Returned List.* 1899.

Elmore county, Ala., precinct No. 18. List of property and assessment *vs.* Louisa V. Kid, executrix, & L. A. Bates, executor, of the estate of H. B. Tulane, deceased, for yr.- 1893, 1894, 1895, 1896, 1897, & 1898.

17 List of property returned for taxation by Louisa V. Kidd, ext., & L. A. Bates, extr., est. H. B. Tulane, best No. 8, to J. I. Plott, tax assessor of Elmore county, Ala., for the year 1899.

Stocks bonds money money hoarded or on deposit subject draft or order, or in safety-deposit box, safe or vault, & elsewhere. Money capital, money lent, solvent credits & credits of value in the aggregate of the value of $200,000 for the yrs. of 1893 1894 1895 & 1896 & 1897 — 1898.

Subscribed to before me this the 16 day of Dec. 1898.

J. I. PLOTT,
Tax Assessor.

Endorsement: Received and filed Dec. 16th 1898. W. P. Gaddis, judge of probate. Principal judge of the commissioners' court. The within bill of exceptions is correct. Gordon Macdonald, att'y for State of Alabama. Filed in office Dec. 22nd 1900. L. C. Smith, clerk.

Appeal Bond to Supreme Court.

Circuit Court.

No. 2225.

THE STATE OF ALABAMA, }
Elmore County. }

Know all men by these presents, that we, Louisa V. Kidd, executrix of the will of H. B. Tulane dec'd and Louisa V. Kidd individually Fannie L. Moragne, M. K. Dunlap and J. D. Dunlap are held and firmly bound unto the State of Alabama in the sum of thirteen thousand dollars for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Sealed with our seals, and dated this, the 14 day of December 1900.

Whereas, at the fall term 1900, of the circuit court of and for said county on, to wit: the 2nd day of November 1900, the said State of Alabama recovered a judgment in said court against L. V. Kidd ex'tr'x est. of H. B. Tulane deceased for the sum of five thousand nine hundred dollars, debt and damages, and the further sum of — dollars, the cost in that behalf expended; and whereas, on
18 this day, the said L. V. Kidd ex'tr'x est. of H. B. Tulane as such defendant, has made application for an appeal from said

judgment to the next term of the supreme court, to be holden of and for said State, to reverse said judgment, and also for a supersedeas of the execution of said judgment, which has been granted on entering into this bond.

Now therefore, the condition of the foregoing obligation is such, that if the said L. V. Kidd ex'tr'x est. of H. B. Tulane shall prosecute her said appeal to effect, and satisfy such judgment as the supreme court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

And we, and each of us, hereby waive all rights of claim of exemption we or either of us have now or may hereafter have, under the constitution and laws of Alabama, and we hereby severally certify that we have property free from all encumbrance, to the full amount of the above bond.

LOUISA V. KIDD. [L. S.]
FANNIE L. MORAGNE. [L. S.]
MYRTLE K. DUNLAP. [L. S.]
J. D. DUNLAP. [L. S.]

Approved:
Dec. 21st 1900.
L. C. SMITH, *Clerk.*

Filed this 21st day of Dec. 1900.
L. C. SMITH, *Clerk.*

Citation of Appeal to Supreme Court.

Circuit Court, Fall Term, 1900.

No. 2225.

THE STATE OF ALABAMA, }
Elmore County. }

To the State of Alabama or its attorneys of record, Gordon McDonald, H. R. Golson, & Jno. H. Parker, Greeting:

Whereas, Louisa V. Kidd executrix of the will of H. B. Tulane deceased, has taken an appeal from the judgment of the circuit court of said county in the cause of the State of Alabama against Louisa V. Kidd executrix of the will of H. B. Tulane deceased,

Now, you are, therefore, cited to appear at the present term 1900, of the supreme court of Alabama, to defend on said appeal, if you shall think proper so to do.

Witness my hand, this 27th day of Dec. 1900.

L. C. SMITH, *Clerk.*

19 Endorsements: Service of the within citation and notice of appeal is hereby accepted, and notice and personal service by sheriff is waived. H. R. Golson, one of the attorneys for the State of Alabama. Dec. 27, 1900. Filed Dec. 27th, 1900. L. C. Smith, clerk.

Certificate of Appeal to Supreme Court.

Circuit Court, Fall Term, 1900.

No. 2225.

THE STATE OF ALABAMA, }
Elmore County. }

I, L. C. Smith, clerk of the circuit court of said county, hereby certify that the foregoing pages, from 1 to 14 inclusive, contain a full and complete transcript of the record and proceedings of the said circuit court in a cause therein pending wherein The State of Alabama is plaintiff, and Louisa V. Kidd executrix is defendant; that the said Louisa V. Kidd did on the 21st day of December, 1900, after giving security for cost, obtain an appeal to the present term, 1900 of the supreme court of Alabama, and that Louisa V. Kidd, Fannie L. Moragne, Myrtle K. Dunlap and J. D. Dunlap are the sureties for said costs; all of which I hereby certify to said supreme court.

Witness my hand, this the 28th day of December, 1900.

L. C. SMITH, *Clerk.*

20 *Assignment of Errors.*

Comes the appellant by attorney and says that in the record & proceedings of the lower court manifest error hath intervened to her detriment, as follows:

1. The lower court erred in overruling the demurrer to the complaint.
2. The lower court erred in sustaining plaintiff's demurrer to defendant's plea No. 1.
3. The lower court erred in sustaining plaintiff's demurrer to defendant's plea No. 2.
4. The lower court erred in sustaining plaintiff's demurrer to defendant's plea No. 3.
5. The lower court erred in sustaining plaintiff's demurrer to defendant's plea No. 4.
6. The lower court erred in giving to the jury the instruction to find for the plaintiff if they believed the evidence.
7. The lower court erred in refusing to give to the jury the written instruction in these words: "If the jury believe the evidence they will find for the defendant as to the claim for taxes on shares of foreign railroad companies."

GUNTER & GUNTER,
J. M. CHILTON,
For Appellant.

21 *Orders of Supreme Court.*

Supreme Court of Alabama, Tuesday, April 9th, 1901. (Min. 52, p. 206.)

5 Div., 51.

LOUISA V. KIDD, Ex'tr'x, &c.,
v.
THE STATE OF ALABAMA.

Appeal from Elmore circuit court.

Come the parties by attorneys, and argue and submit this cause for decision.

Supreme Court of Alabama, Saturday, June 29th, 1901. (Min. 52, p. 335.)

5 Div., 51.

LOUISA V. KIDD, Ex'tr'x, &c.,
v.
THE STATE OF ALABAMA.

Appeal from Elmore circuit court.

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the court, it is considered that in the record and proceedings of the circuit court there is no error. It is therefore considered that the judgment of the circuit court be in all things affirmed. It is also considered that the appellant, and Fannie L. Moragne, Myrtle K. Dunlap and J. D. Dunlap, sureties on the appeal bond, pay the amount of the judgment of the circuit court and ten per centum damages thereon and interest, the costs of appeal of this court and of the circuit court.

And it appearing that said parties have waived their right of exemptions under the laws of Alabama, let execution issue accordingly.

22 (Filing.)

5 Div., 51. Supreme Court of Alabama.

Filed Aug. 6, 1901. Rob't F. Ligon, Jr., Clerk.

Supreme Court of Alabama.

THE STATE OF ALABAMA, Plaintiff,
v.
LOUISA V. KIDD, as Ex'r'x, etc., Defendant. } No. —.

Know all men by these presents, that we, Louisa V. Kidd as executrix of the last will of H. B. Tulane, dec'd, as principal, and the

American Bonding & Trust Company, surety, are held and firmly bound unto The State of Alabama, plaintiff above named, in the sum of $12,000 to be paid to the said State of Alabama, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 6 day of August 1901.

Whereas, the above-named defendant, Louisa V. Kidd, as executrix of the will of H. B. Tulane deceased, has sued out a writ of error to the Supreme Court of the United States, to reverse the judgment in the above-entitled cause by the supreme court of Alabama.

Now, therefore, the condition of this obligation is such, that if the above-named Louisa V. Kidd as executrix of the will of H. B. Tulane, deceased, shall prosecute said writ of error to effect and answer all costs and damages, if she shall fail to make good her plea, then this obligation to be void, otherwise to remain in full force and virtue.

LOUISA V. KIDD, *As Ex. of H. B. Tulane,*
By W. A. GUNTER.
THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By GASTON GUNTER, *Vice-Pres't.*

Attest: CHARLES P. GUNTER, *Ass't Sec'y.*

App'd
T. N. M.

Approved Aug. 6 1901.
THOS. N. McCLELLAN,
Chief Justice, etc.

{Seal The American Bonding & Trust Co. of Baltimore City, Incorporated 1894.}

23 THE STATE OF ALABAMA, }
Judicial Department. }

The Supreme Court of Alabama, November Term, 1900, 5 Div., 51.

LOUISA V. KIDD, Ex'tr'x, Appellant, }
v. }
THE STATE OF ALABAMA. }

From Elmore circuit court.

THE STATE OF ALABAMA, }
City and County of Montgomery. }

I, Robert F. Ligon, Jr., clerk of the supreme court of Alabama, do hereby certify that the foregoing pages numbered from 1 to 22 inclusive, contain a full, true and correct copy of the record and proceedings of the lower court, and of the orders and judgment entry of the supreme court of the State of Alabama together with a copy

of the supersedeas and appeal bond in the above-stated cause, as the same appear and remain of record in this office.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Alabama, at the capitol, this, 10th day of August, 1901.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON, JR.,
Clerk of the Supreme Court of the State of Alabama.

24 Supreme Court of Alabama, 5 Div., 51.

LOUISA V. KIDD, Appellant,
v.
STATE OF ALABAMA, Appellee.

Louisa V. Kidd, as executrix of the will of H. B. Tulane, defendant in the above-entitled cause, feeling herself aggrieved by the judgment entered on the 29th day of June, 1901, comes now by W. A. Gunter, her attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, for that she says that in said cause there was drawn in question the validity of a statute of the State of Alabama on the ground of its being repugnant to the Constitution of the United States as denying to defendant the equal protection of the laws; and also petitions that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this court be suspended and stayed, until the determination of said writ of error by the Supreme Court of the United States.

And petitioner will ever pray.

W. A. GUNTER,
Att'y for Defendant.

25 The Supreme Court of the United States, October Term, 1901.

LOUISA V. KIDD, as Executrix of the Will of H. B. Tulane, Deceased, Pl't'ff in Error,
v.
STATE OF ALABAMA, Def't in Error.

Comes the plaintiff in error and files the following assignments of error, upon which she will rely in the prosecution of her writ of error in the above-entitled cause.

1. The lower court erred in sustaining plaintiff's demurrer to defendant's plea No. 1.

2. The lower court erred in sustaining plaintiff's demurrer as to plea No. 3.

3. The lower court erred in sustaining plaintiff's demurrer to plea No. 4.

4. The lower court erred in giving to the jury the instructions to find for the plaintiff if they believe the evidence.

5. The lower court erred in refusing to give to the jury the written instructions in these words: "If the jury believe the evidence, they will find for the complainant as to the claim for taxes on shares of foreign railroad companies."

W. A. GUNTER,
Att'y for Plaintiff in Error.

[Stamped:] Supreme court of Alabama. Filed Aug. 6 1901. Rob't F. Ligon, Jr., clerk.

26 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judge of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Alabama before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between The State of Alabama, plaintiff, and Louisa V. Kidd, as executrix of the will of H. B. Tulane, deceased, defendant, wherein was drawn in question the validity of a statute of, or an authority under, said State on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, a manifest error has happened, to the great damage of the said Louisa V. Kidd as by her complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday in October next, in the said Supreme Court to be then and there held, and the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right, and according to the laws and customs of the United States should be done.

Seal of the United States Circuit Court, Middle District of Alabama.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 6th day of August, in the year of our Lord one thousand nine hundred and one.

J. W. DIMMICK,
Clerk of the United States Circuit Court for the Middle District of Alabama.

Allowed by—
THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

[Stamped:] Supreme court of Alabama Filed Aug. 6 1901. Rob't F. Ligon, Jr., clerk.

27 Supreme Court of Alabama.

LOUISA V. KIDD, as Executrix, etc.,
v.
STATE OF ALABAMA.

The defendant, Louisa V. Kidd, as executrix of the will of H. B. Tulane, deceased, having this day filed her petition for writ of error from the decision and judgment thereon made and entered, to the Supreme Court of the United States, together with an assignment of errors within due time, and also praying an order to be made fixing the amount of security which this defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Supreme Court, and said petition having this day been duly allowed and the security being now offered and approved, it is therefore ordered that upon the filing of the said security with the clerk of this court in the sum of $12,000.00, all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by the said Supreme Court of the United States.

Dated the 6 day of August, 1901.

THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

28 Supreme Court of the United States.

LOUISA V. KIDD, as Executrix, etc., Pl't'ff in Error,
v.
STATE OF ALABAMA, Def't in Error.

The United States of America to the State of Alabama, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Alabama, wherein Louisa V. Kidd as executrix of the will of H. B. Tulane deceased, is plaintiff in error and The State of Alabama is defendant in error, to show cause, if any there be, why the judgment rendered in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thos. N. McClellan chief justice of the supreme court of Alabama, this 6 day of August in the year A. D., 1901.

THOS. N. McCLELLAN,
Chief Justice of the Supreme Court of Alabama.

Service of the above notice accepted and copy received.
Aug. 7th 1901.

GORDON MACDONALD,
Att'y for State of Alabama.

Endorsed on cover: File No. 18,256. Alabama supreme court. Term No. 403. Louisa V. Kidd, as executrix of the will of H. B. Tulane, deceased, plaintiff in error, *vs.* The State of Alabama. Filed August 28th, 1901.